

Nicole Barstow

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Pro Se Creditor

UNITED STATES BANKRUPTCY COURT : Chapter 11
SOUTHERN DISTRICT OF NEW YORK : Case no: 22-10946
: (Jointly Administered)
IN RE CELSIUS NETWORK, LLC et al. :

**MOTION TO ALLOW SECURED CREDITOR STATUS AMENDED
OBJECTION TO DEBTORS CLAIM OF FULL OWNERSHIP AND TITLE
AND OBJECTION TO THE SALE OF ASSETS IN THE ORDINARY
BUSINESS COURSE**

The undersigned, Nicole Barstow, Pro Se Creditor hereby submits her objections to the debtors claim that they own full 100% ownership and title of the assets within the “Earn” and Borrow programs Celsius Network, LLC accounts because of the following reasons:

1.) Creditors in the EARN program are secured creditors, and therefore have an ownership and security interest that has attached and been perfected in the assets within their Celsius Earn accounts for the reasons and law specified in the prior motions of the undersigned filed in regards to secured creditor status.

2.) Furthermore, the undersigned creditor has a security interest that was attached and therefore ownership of the funds on the platform pursuant to the § 9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST; PROCEEDS; SUPPORTING OBLIGATIONS; FORMAL REQUISITES.

(a) [Attachment.]

"a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

D) the collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under Section 9-104, 9-105, 9-106, or 9-107 pursuant to the debtor's security agreement."

a.) Value has been given by the creditor; the debtors have rights in the collateral pursuant to the Terms of Use (Version 6 [security agreement]) which the debtors state that they have an ownership and security interest within the funds of the Earn and Borrow programs on the Celsius platform.

I.) Terms of Use version 6 states: 9. Setoff and Security Interest Rights "You grant us a security interest in any and all Eligible Digital Assets loaned to Celsius or otherwise credited to your Celsius Account".

b.) The collateral is deposit accounts as shown in the creditor account history of deposits and withdrawals.

c.) The creditor has control of the deposit account pursuant to her ability to deposit and withdraw as shown in the creditor account history on file with the court, prior to the bankruptcy filing and the Terms of Use version 6 (last Terms of Use to be accepted and therefore binding by the creditor).

I.) Terms of Use, version 6 states "You may terminate any loan to Celsius at any time, and request that Celsius return the borrowed Eligible Digital Assets and deliver any Rewards accrued from the Earn Rewards service, in each case by transferring such Eligible Digital Assets and Rewards to your external Virtual Wallet (in accordance with Section 11 below, "Withdrawals")."

II.) 6. Authorized Users For both Individual and Corporate Celsius Accounts, **"we may follow any instructions regarding your Celsius Accounts** provided that we reasonably believe such instructions are authorized by the Celsius Account holder, and we will not be held liable for following any

instructions provided by a person designated or identified as an authorized User or Authorized Representative."

III.) Terms of Use version 6 states: 11. Withdrawals Subject to these Terms, "you have a call option on all loans made to Celsius to demand immediate complete or partial repayment of any loan at any time through a complete or partial withdrawal of Eligible Digital Assets from your Celsius Account balance at any time."

3.) Furthermore, within the last version of the Terms of Use (version 6) that required an acceptance of the Terms of Use to continue using the platform, there are numerous references to the account holder funds as **owned** and **your funds in regards to the creditor by the debtors "security agreement"** aka Terms of Use.

a.) Terms of Use states" in: 4. Services A. Celsius Account **Your** Celsius Account allows you to view your balances in connection with the Services provided to you by Celsius and access the Services and conduct certain transactions online."

b.) 5. Celsius Account Types A. Individual Account "This Celsius Account is **owned** by only one natural person who is and will continue to be the only person authorized to take any action in the Celsius Account. By opening an Individual Celsius Account, you represent and warrant that you are and shall at all times continue to be the **sole beneficial owner** of the Celsius Account and user of all Services facilitated or generated therefrom."

c.) 8. Ownership of Digital Assets "You hereby represent and warrant to us that any Digital Asset delivered by you for the purpose of utilizing Celsius' Services is **owned** by you..."

4.) The retail and institutional co- borrowers are co-debtors, and their pledged collateral has a supporting obligation to the Earn programs creditor loans because, they have a security interest obligation pursuant to the debtor's security interest written within the Terms of Use, and are therefore liable for the collateral owed to the Earn program creditors.

a.) Pursuant to § 9-203, **"(d) [When person becomes bound by another person's security agreement.]**

A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

(1) the security agreement becomes effective to create a security interest in the person's property; or

(2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) [Effect of new debtor becoming bound.]

If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) the agreement satisfies subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) another agreement is not necessary to make a security interest in the property enforceable."

I.) f) [Proceeds and supporting obligations.]

"The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by Section 9-315 and is also attachment of a security interest in a supporting obligation for the collateral."

II.) (g) [Lien securing right to payment.]

"The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien."

III.) The undersigned certifies that under oath, CFO Chris Ferraro testified that ALL retail borrowers and the majority of institutional borrowers pledged collateral for loans taken on the Celsius platform.

5.) Whether the debtor has "title" or an ownership/ security interest to the Earn account assets while they are being loaned within a Celsius account is irrelevant to the matter of secured creditor status. Furthermore, once assets are withdrawn or sold all rights and title reverts to the secured creditor automatically pursuant to the Terms of Use version 6 and the UCC law of secured creditors 'proceeds collateral' (described in the prior amended motion/objection of the undersigned).

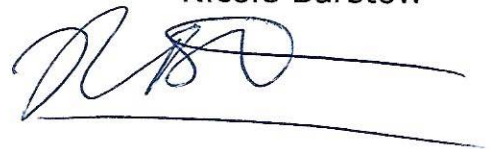
a.) Pursuant to **§ 9-202. TITLE TO COLLATERAL IMMATERIAL.**

"Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor."

Wherefore, the undersigned, respectfully requests that the court allow my motion for secured creditor status and deny the debtors request to deem my loan to them as unsecured, and deny the debtors the ability to sell my assets in the Earn program "free and clear" of the lien/ security interest of a secured party. The undersigned also request determination of the discharge ability of the lien based on the reason within my prior amended motion/objection. Finally, the undersigned request from the court adequate protection in the form of lump sum payments if the debtor decides to sell/use any collateral described (within my UCC financing statement) in the ordinary course.

Respectfully Submitted,

Nicole Barstow

A handwritten signature in blue ink, appearing to read 'Nicole Barstow', with a long horizontal line extending to the right.

Pro Se Creditor

Certificate of Service

The undersigned, Nicole Barstow, hereby certifies that a copy of the foregoing motion has been delivered electronically to all parties of interest on Sept 28th, 2022.

A handwritten signature in black ink, appearing to read 'NBarstow', is written over a horizontal line.

Nicole Barstow